

**PT 00-2**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>JAMES W. BALZER (lessor)</b>	)		
<b>LIMESTONE TOWNSHIP FIRE</b>	)		
<b>PROTECTION DISTRICT (lessee)</b>	)		
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>97-72-184</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>17-01-201-002</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Ms. Lisa A. LaConte, attorney at law, appeared on behalf of the Limestone Fire Protection District.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on July 28, 1999, to determine whether or not Peoria County Parcel Index No. 17-01-201-002 qualified for exemption from real estate taxation for the 1997 assessment year.

Ms. Cynthia Weber, trustee-treasurer of the Limestone Township Fire Protection District (hereinafter referred to as the "District") was present and testified on behalf of the district.

The issues in this matter include: first, whether the district is a municipal corporation; secondly, whether this parcel was held in trust for the use and benefit of the district; and lastly,

whether the municipal corporation used this parcel for public purposes during 1997.

Following the submission of all of the evidence and a review of the record, it is determined that the district is a municipal corporation. It is also determined that this parcel was held in trust for the use and benefit of the district. Finally, it is determined that the municipal corporation used this parcel for public purposes during the 1997 assessment year.

It is recommended that if this Parcel Index Number is a leasehold number, that Peoria County remove the aforesaid number from the tax rolls. It is further recommended that a fee assessment number be issued for this parcel and that the fee assessment number be exempt from real estate taxation for the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue, (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1997 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On June 9, 1997, the Peoria County Board of Review transmitted to the Department an Application for Property Tax Exemption to Board of Review concerning the parcel here in issue for the 1997 assessment year. (Dept. Ex. No. 2)

3. On November 6, 1997, the Department advised the District that it was denying the exemption of this parcel because the district was the lessee and not the owner of this parcel. (Dept. Ex. No. 3)

4. By a letter dated November 19, 1997, the attorney for the district requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on July 28, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. Limestone Township Fire Protection District, (the district) is a taxing district that levies and assesses taxes. The volunteer fire department which responds to fires in the district, using the facilities and equipment of the district, is also known as Limestone Township Fire

Protection District. (Tr. p. 18)

7. Peoria County Parcel Index No. 17-01-201-002 consists of .376 acres. It is improved with a two bay firehouse, an asphalt driveway from the firehouse to the highway, and a gravel parking area. The firehouse contains two bays for storing fire trucks, an area for storing firefighting gear, and a restroom. (Dept. Ex. Nos. 2A-2F, Tr. p. 12)

8. When there is a fire, pagers carried by each firefighter notify the firefighters of the fire. The firefighters then drive to the firehouse, open the door with a key card, get their gear off the gear racks, get in the trucks, and respond to the fire. (Tr. pp. 17 & 18)

9. On April 17, 1975, Sarah Virginia Balzer and James W. Balzer leased the .376 acre parcel here in issue to the district for a term of 99 years with an option to renew the lease for an additional 50 years. On March 21, 1988, James William Balzer as Trustee under the James William Balzer Revocable Trust Agreement conveyed by a trustee's deed this .376 acre parcel and other lands to Deuard B Gunter, Danny R. Gunter, and Robert L. Gunter, as tenants in common, subject to the foregoing lease. (Dept. Ex. Nos. 2I & 2H)

10. The lease to the district dated April 17, 1975, provides that the district shall pay one dollar per year as rent during the 99-year lease. (Dept. Ex. No. 2I)

11. The lease provides that the district shall not assign this lease without the written consent of the lessor. The lease provides that the district is to only use the premises for fire protection purposes. The lease also provides that if at any time the district does not use the property for fire protection purposes, the lease shall terminate and the lessor shall re-enter and repossess the property. (Dept Ex. No. 2I)

12. The lease provides that the district shall pay all real estate taxes assessed against the leased premises. (Dept. Ex. No. 2I)

13. In response to a written request from the Administrative Law Judge, the Supervisor of Assessments of Peoria County advised in writing that Peoria County Parcel Index No. 17-01-201-002 was a leasehold parcel number. (Dept. Ex. No. 2P)

14. The witness for the district testified that Deuard, Danny, and Robert Gunter were

farmers. (Tr. p. 20)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning municipal corporations, 35 **ILCS** 200/15.75 provides as follows:

All market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes is exempt.

Concerning fire protection districts 70 **ILCS** 705/1 provides as follows:

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, welfare and convenience of the public, it is necessary in the public interest to provide for the creation of municipal corporations known as fire protection districts and confer upon and vest in the fire protection districts all powers necessary or appropriate in order that they may engage in the acquisition, establishment, maintenance and operation of fire stations....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax

exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the applicant to establish that it is entitled to an exemption.

The lease from the Balzers to the district is a lease for a nominal consideration, namely one-dollar per year. That lease also provides that the lease cannot be assigned without the written consent of the lessor. Finally, the lease provides that if at any time the district stops using the property for fire protection purposes the lease terminates and the lessor may re-enter and repossess the same. Now that this parcel and other lands have been sold to Deuard, Danny, and Robert Gunter, I conclude that Deuard, Danny, and Robert are the holders of bare legal title to this parcel. This parcel is improved with a two bay firehouse, a driveway, and a parking area which are exclusively used by the district for fire protection purposes.

In the case of People v. Chicago Title & Trust, 75 Ill.2d 479 (1979), the Illinois Supreme Court determined that the beneficiary of an Illinois land trust who controlled the property and received all of the benefits was the owner of the property for real estate tax purposes. In reaching this conclusion, the Court stated as follows:

It is a generally accepted principle that taxes are imposed for benefits received. Thus, where the trust beneficiary is recipient of all the benefits of the property and controls the management of the property, he is the party most benefited by the ends of taxation, regardless of who holds the title. Revenue collection is not concerned with the 'refinements of title'; it is concerned with the realities of ownership.

In this case Deuard, Danny, and Robert Gunter are the bare legal titleholders of the property and the district, pursuant to the lease is the recipient of all the benefits of the property. The district controls the management of the property so long as it continues to use the property for fire protection purposes which it has done and did during the 1997 assessment year. In the case of Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5<sup>th</sup> Dist. 1981)

the Court determined as follows:

The key elements of ownership are control and the right to enjoy the benefits of the property.

The Illinois Courts have held that property will qualify for exemption where it is held by an organization in trust for the use and benefit of an exempt organization. *See People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). *See also Community Mental Health Council, Inc. v. Department of Revenue*, 186 Ill.App.3d 73 (1<sup>st</sup> Dist. 1989). I therefore conclude that Deuard, Danny, and Robert, held this parcel in trust pursuant to the lease for the use and benefit of the district.

I therefore conclude that the district is a municipal corporation. I also conclude that during 1997 this parcel was held in trust for the use and benefit of the district. Finally, I conclude that the district, a municipal corporation, used this parcel for public purposes during the 1997 assessment year.

Concerning property which is leased 35 **ILCS** 200/9-195 provides in part as follows:

Except as provided in Section 15-55, when property which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as on property that is not exempt, and the lessee shall be liable for those taxes. (Emphasis supplied)

In view of the fact that ownership of the parcel in question by Deuard, Danny, and Robert Gunter does not qualify for a property tax exemption, it is inappropriate for Peoria County Parcel Index No. 17-01-201-002 to be a leasehold parcel number pursuant to the above statute.

I therefore recommend that if Peoria County Parcel Index No. 17-01-201-002 is a leasehold parcel number, that Peoria County remove the aforementioned number from the tax rolls. It is further recommended that a fee parcel index number be issued for this parcel and that said fee parcel index number be exempt from real estate taxation for the 1997 assessment year.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
February 23, 2000